with the land managers, the true lovers of the environment will come to agree with us that our bill for wilderness in the State of Utah is the proper environmental response.

The PRESIDING OFFICER (Mr. BROWN). The distinguished senior Senator from Utah.

Mr. HATCH. Mr. President, I want to compliment my colleague for his very good remarks and his ability to put into prosaic and also simple terms just what is involved here.

In fact, both of us have been fighting for this for a long time. It is a moderate, reasonable approach. We really appreciate our colleagues who cooperated to help us on this, because it is not going to go away for us or for anybody else here until we get it resolved. It is a reasoned, moderate, decent approach.

Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUDICIAL SELECTION

Mr. HATCH. Mr. President, I rise to address an issue that I have discussed recently before the Senate: judicial selection. As I have said before, differences in judicial philosophy can have real and profound consequences for the safety of Americans in their neighborhoods homes and workplaces. Judges are every bit as much a part of the Federal anticrime effort as are U.S. attorneys and FBI and DEA agents.

In my last speech, I drew attention to two Federal district judges appointed by President Clinton—Judges Harold Baer, Jr. and James Beaty. These two judges rendered decisions favorable to criminal defendants based on legal technicalities that had nothing to do with their guilt.

Judge Baer sparked outrage throughout the Nation when he suppressed evidence seized during the stop of an automobile by police who had witnessed four men drop off two bags in the trunk at 5 a.m., without speaking to the driver, and who then rapidly left the scene when they saw a police officer looking at them. The bags turned out to contain about 80 pounds of drugs. Judge Beaty has received similar criticism for releasing a man who murdered his parents in their own bed because a juror had gone to look at a tree where the murder weapon was found.

I was pleased to learn that President Clinton is upset about Judge Baer's outrageous decision. He even momentarily suggested, through his press secretary, that the judge should resign if he does not reverse himself. But President Clinton concern is too little, too late. He should have been more concerned when he nominated this individual to lifetime tenure as a Federal judge. A mistake here lasts a lifetime, not just 4 years. Judge Baer is one of President Clinton's lasting legacies.

And the President's concern comes only after I and many others have criticized the decision literally for weeks.

The President talks about putting cops on the beat, yet he appoints judges who are putting criminals back on the street.

Now that the American people are suffering from the consequences of this administration's judicial nominations, President Clinton's initial solution was to call upon Judge Baer to resign. This was a meaningless gesture that has no practical effect because the only way to remove a judge is to impeach him. President Clinton is now left to hoping Judge Baer will reverse himself. The true check on these solf-on-crime judicial activists is to never appoint them in the first place.

Let me be clear, I did not call for Judge Baer's resignation. I simply pointed out that there is no substitute for the sound exercise of the President's power to appoint judges to lifetime positions.

Let me assure my colleagues, Judge Baer is not the only judge appointed since January, 1993 that, in my view, President Clinton should feel misgivings about.

Will the President chastise Judge Beaty, or does he agree with his decision to release a convicted double murderer on a technicality? I am not alone in my criticism of Judge Beaty—the Wall Street Journal has said that Judge Beaty and his Carter-appointed colleague took ''a view of defendants' rights that is so expansive that they are willing to put a murderer back out on the streets because a juror took a look at a tree.'' The entire fourth circuit has voted to grant en banc review of the case, and I fully expect the court to do the right thing and reverse Judge Beaty's misguided opinion.

But President Clinton has not called upon Judge Beaty to resign. Instead, he is rewarding Judge Beaty by promoting him. He has nominated Judge Beaty to the fourth circuit. While the President cannot force activist, soft-on-crime judges to resign, he can choose to keep them where they are instead of promoting them to the appellate courts, where they can do even more damage to the law and to our communities. Will President Clinton regret Judge Beaty's soft-on-crime decisions if they start to issue from the fourth circuit? Will he then suggest that Judge Beaty resign? Perhaps he ought to withdraw that nomination—it is in is power to do so, removing Judge Baer is not.

To be sure, Republican appointed judges can make erroneous rulings. And, I understand the Clinton administration is on a desperate damage control mission to mention such rulings. That is fine by me, because the more information about the track records of Republican and Democratic appointed judges, the better.

I hardly agree with every decision of a Republican appointed judge. Nor do I disagree with every decision of a Democratic appointed judge.

Nevertheless, there can be little doubt that judges appointed by Republican Presidents will be generally tougher on crime than Democratic appointees. As I will explain in this and subsequent speeches, on the whole judges appointed by Democrat Presidents are invariably more activist and more sympathetic to criminal rights than the great majority of judges appointed by Republican Presidents.

I does little good to ask these judges to resign or to chastise them after they have inflicted harm upon the law and upon the rights of our communities to protect themselves from crime, violence, and drugs. President Clinton's momentary resignation gesture is only the latest example of this administration's eagerness to flip-flop wherever it meets a stiff breeze of public disapproval of its actions.

And what excuse, Mr. President, does President Clinton have for the nomination of Judge J. Lee Sarokin of the U.S. Court of Appeals for the Third Circuit, and Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit? These are two of the most activist friends of criminal rights on our Federal courts of appeals. Their judicial track records were crystal clear at the time President Clinton appointed them. The President nominated Judges Sarokin and Barkett with full knowledge of their records.

I will have more to say about these two judges in the future, but let me remind the Senate and the American people that I led the opposition to these two nominees because of their activist, soft-on-crime approach. The Clinton administration fought hard to get these nominees through the Judiciary Committee and through the Senate, which confirmed both Judge Sarokin and Judge Barkett in 1994.

I regret to say that my predictions about these two judges have been proven correct. Judge Sarokin has repeatedly come down on the side of criminals and prisoners in a series of cases, and he recently voted to overturn the death sentences of two Delaware men who, in separate cases, killed several elderly people. Not to be outdone by her New Jersey colleague, Judge Barkett has continued her tolerant attitude toward drugs in our society and her suspicion of the police. Just last month she argued in an opinion that police could not conduct random roadblocks to prevent traffic violations and to search for drugs—in her words the searches were ''intolerable and unreasonable.''

Luckily, in both of the cases that I have just mentioned, Reagan and Bush appointees formed a majority of the court and ensured that Judges Sarokin and Barkett's views were made known as dissents. But if Judges Sarokin and Barkett and other Clinton nominees had formed a majority on those courts, they would have put the criminals back on the street. If President Clinton should win a second term, he will appoint a majority of the judges on the Federal courts of appeals. Judges Barkett and Sarokin provide a clear

example of what we can expect from the Federal courts should President Clinton appoint judges for 4 more years.

Can the administration name any Reagan or Bush appellate judges who have argued so often and so vigorously in favor of elevating criminal rights above the right of the community to protect itself? I don't think they can. In fact, the record indicates that the current administration has nominated several judges who have ruled in favor of criminals or prisoners clearly and consistently. When they are right, that is fine. In most of these cases they are wrong.

For example, let me tell the American people about the case of *United States* v. *Hamrick*, [43 F.3d 877 (CA4 1995) (en banc)]. While serving time in Federal prison for threatening to kill President Reagan, defendant Rodney Hamrick built several improvised bombs, threatened to destroy a Federal building, shot other inmates with improvised guns, and threatened to kill Federal judges. While serving his various sentences, Hamrick built a letter bomb of materials available in prison that, in the words of Judge Michael Luttig's opinion for the fourth circuit, if fully effective could have produced a 1,000-degree fireball up to 3 feet in diameter. This fireball would have burned the skin and eyes of anyone exposed to it. If those exposed were inhaling when the bomb detonated, the fireball could have seared their lungs, possibly resulting in death.

Hamrick sent the bomb to William Kolibash, the U.S. attorney for the Northern District of West Virginia, whose office was responsible for Hamrick's prosecution. Kolibash opened the package, but the bomb was faulty and only scorched the package instead of detonating. Hamrick put his own return address on the envelope, making his arrest an easy matter since he was in prison. Hamrick confessed and stated that he intended the bomb to go off in retaliation for his prosecution.

Hamrick was convicted by a jury of assault of a U.S. attorney with a deadly or dangerous weapon under 18 U.S. §111(b). Relying upon applicable Supreme Court precedent, Judge Luttig affirmed the conviction for the en banc fourth circuit. He was joined by Judges Russell, Widener, Wilkinson, Wilkins, Niemeyer, and Williams. Judge Hamilton wrote a concurring opinion. All of these judges were appointed by Republican Presidents.

Judge Ervin, then chief judge and an appointee of President Carter, wrote the dissent. He was joined by every Democratic appointed judge on the circuit in arguing that because the bomb was made badly, it could not constitute a deadly or dangerous weapon under the statute. Judge Blane Michael, President Clinton's appointment to the fourth circuit, joined this illogical, unreasonable decision. He joined Chief Judge Ervin's conclusion that because the bomb lacked an igniter, it could not be called a dysfunctional bomb, as the majority concluded, but instead was, in the dissent's phrase, an ''incomplete bomb,'' and hence could not be a dangerous weapon under the statute. Goodness gracious. What if it had been a real bomb?

Mr. President, I imagine that Judge Ervin and Judge Michael also would think that if a defendant pointed a gun at you or me and pulled the trigger, but the gun is defective and doesn't fire, the defendant would not be guilty of attempted murder because he used an incomplete gun. Such sophistic word games demonstrate the eagerness of Judge Michael and his dissenting colleagues to protect criminals at the expense of law enforcement.

Even once the criminals are convicted and sent to prison, the judges nominated by President Clinton continue to adopt a tolerant attitude. These judges are determined to defend prisoners against the rights of society to defend itself from violent crime. These judges should be more concerned about the rights of society to incarcerate convicted criminals and to run orderly prisons before they start wringing their hands about how unfair a punishment it is to be in jail.

On this score, let me just identify one decision out of many that exemplifies the willingness of some activist Clinton judges to protect those who have harmed and attacked our society. Let me tell the American people about Giano versus Senkowski, a case in which an inmate brought a Federal civil right suit against a prison that refused to allow inmates to possess sexually explicit photographs of spouses or girlfriends. The plaintiff somehow felt that his first amendment rights were violated. It is a demonstration of how far activist judges have already expanded the laws that a prisoner can even bring a lawsuit on such a frivolous claim.

The majority, Judges Joseph McLauglin and Dennis Jacobs, both Bush appointees, properly rejected the prisoner's amazing claim that this policy violated his first amendment rights. Under Supreme Court precedent, courts are to uphold prison regulations if they are reasonably related to a legitimate penological interest. This was the case here, especially in light of the duty of the Federal courts to grant prison administrators discretion to run their prisons in a safe, efficient, and orderly way. Convicted criminals are in prison for a reason: punishment. Sometimes, activist judges forget this simple fact.

Unfortunately, Judge Guido Calabresi, a former dean of the Yale Law School who President Clinton appointed to the second circuit, disagreed. He dissented from the majority and asserted that the first amendment provides prisoners with the right to possess such sexually explicit photographs. Judge Calabresi even went so far as to compare his position with the position of the Supreme Court in the Pentagon Papers case, as examples of instances in which the courts courageously resisted scare tactics in the absence of proof.

What the first amendment's plain words—''Congress shall make no law abridging the freedom of speech, or of the press''—has to do with convicted prisoners prossessing sexually explicit pictures is beyond me.

Judge Calabresi argued that the case should be sent back for factfinding—what this factfinding would be I do not want to know—because he thought it possible that these pictures might diminish violence by mollifying prisoners. Gee. What reasoning. Judge Calabresi also saw fit to suggest several alternative policies, such as allowing inmates to be sent photographs but providing that the pictures may be seen only at appointed places, or allowing photographs to be received and seen for a brief time before they must be returned.

It is exactly this intrusiveness that demonstrates the activist stance of the Clinton judiciary. Here we have a Federal judge of the Second Circuit Court of Appeals deciding what policies a prison ought to have regarding sexually explicit photographs. The judge wants factfinding conducted to produce evidence about the link between such photographs and violence. He has ideas about how the pictures are to be provided and used. I am sorry, but this seems like a job for prison administrators, who are expert at these issues and who are accountable to the people. It is the people, after all, who must pay for the costs of incarceration and who ultimately must fund the fanciful policies Judge Calabresi would impose.

Why is this so important? As a practical matter, we in the Senate give the President deference in confirming judicial candidates nominated by the President.

No one can say that I have not been at the forefront to giving deference to this President. I like him personally. I want to help him. I certainly believe he was elected and I believe he has a right to nominate these judges. I might say though that a Republican President would not nominate the same judges that a Democrat would and vice versa.

Indicia of judicial activism or a soft-on-crime outlook are not always present in a nominee's record. But in the cases of Judge Sarokin and Barkett, they were, and we Republicans in the Senate attempted to defeat them on those grounds.

We also now can view the products of the President's choices. We do not just have two trial judges, Judges Baer and Beaty, who have trouble understanding the role of the Federal courts in law enforcement and in the war on crime. President Clinton has sent judicial activists to Federal appellate courts as well, and the effects of his approach to judicial selection are felt even at a court as high as the Supreme Court. This is not good for the Nation, which

must live under the permissive rules set by these liberal judges when they attempt to rid our streets of crime and drugs.

The judicial philosophy of nominees to the Federal bench generally reflects the judicial philosophy of the person occupying the Oval Office. We in Congress have sought to restore and strengthen our Nation's war on crime and on drugs and to guarantee the safety of Americans in their streets, homes, and workplaces. For all of the President's tough-on-crime rhetoric, his judicial nominations too often undermine the fight against crime and drugs.

This is an important issue. It may be the single most important issue in the next Presidential campaign. Frankly, I hope everybody in America will give some thought to it because I for one am tired of having these soft-on-crime judges on the bench. I for one am tired of having people who, as activists, do not understand the nature and role of judging, which is that judges are to interpret the laws that are made by those who are elected to make them. Judges are not elected to anything. They are nominated and confirmed for life. Hopefully, they will be removed from the pressures of politics and will be able to do what is right. I have to say that many of these judges are very sincere. They are kind-hearted, decent, honorable people who are so soft-hearted that they just do not see why we have to punish people because of the crimes they commit, or why we have to be as tough as we have to be. But those of us who really study these areas know that if a person is put in jail—a violent criminal—until they are 50 years of age there is a very high propensity that they will never commit violence after 50. But if we have them going in and out of the doors in those early years when they are violent criminals, they just go from one violent crime to the next, and society is the loser. We understand that here in the District of Columbia, which is sometimes known as ''Murder Capital U.S.A.'' and ''Drug Capital U.S.A.'' That needs to be cleaned up.

That is why I put $20 million in a recent bill to give directly to the chief of police here so that they can acquire the necessary cars and weapons and ammunition and other facilities that they need to be able to run a better police force. Consider that it was the best police force in the Nation 20 years ago; today it is the worst in the Nation. So we put our money where our mouth is, at least as far as the Senate is concerned. I hope that money stays in in the House.

We have to pay attention where judges are concerned, too. We have to get people who really are going to make a difference against the criminal conduct in our society. I am fed up with our streets not being safe. I am fed up with our homes not even being safe. We are becoming a people who have to lock the doors every time we turn around, and I for one think it is time to stop it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank the Chair.

PRESIDIO PROPERTIES ADMINISTRATION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. MURKOWSKI. Mr. President, this morning my friend from New Jersey reflected a little history of public lands. I listened intently, and while I appreciate his point of view, I suggest there are two points of view relative to the history of public lands and the transition that has occurred in this country.

Under the Northwest Ordinance, which, as a matter of fact, predated the Constitution, the prevailing philosophy was simply to dispose of lands either to the States or the territories or to private individuals. And as the several States obtained their inheritance, they for obvious reasons began to lose interest in further Federal transfers. In other words, they had achieved what they wanted.

Mr. President, this goes back to the period of about 1788 when this Northwest Ordinance prevailed. So they lost the incentive once they received their land and further Federal transfers simply were not necessary. The State of Arkansas obtained over 11 million acres from the Federal Government, over one-third of its total acreage. Only about 3 percent of New Jersey currently is in Federal ownership.

So the history of public lands is a history of those States, mainly the Eastern States, that have already obtained the lands needed for their schools, their roads, their economy, and other purposes. Then we have the Western States and territories that basically remain captive to the Federal Government and the interests of those Eastern States. The definition of ''West,'' as we all know, steadily moved west. It moved from what was West, in 1790, Ohio, to Utah and my State of Alaska in 1990.

According to the 1984 BLM public lands statistics, Florida obtained over 24 million acres from 1803 to 1984 out of a total of 34 million acres in that entire State. Arkansas, as I mentioned, obtained over one-third of its entire acreage. Now, there was a time when the State of New Jersey looked at the western lands as a source of raising money for needs in New Jersey—roads and docks, the harbors, other public works in New Jersey—and there was a time when New Jersey wanted the western lands basically to feed its industry.

It was a concept that is not unknown to us, Mr. President. The Eastern States had the capital base, and where did they look? They looked to the West to put that capital to work in investments that could generate a handsome return because the money centers at that time were in the East, as they are today for the most part. So the eastern at that time, I think it is fair to say, elitists chose to invest in the West and generate a return, and they could continue to live in the more luxurious lifestyle that existed in the East because the West was considered pretty much a frontier. So States like New Jersey and New York invested in western lands to feed, if you will, the fruits associated with the productivity of the West.

Now we have seen a change in that, a rather remarkable change. Let us be realistic and recognize New Jersey and other States now want western lands not necessarily as a return on the investment that was initially generated there, although some of it is fourth and fifth generation wealth, but they look at the West as a playground, a recreation area for themselves and others of that elitist group.

If the State of Utah is unable to use its school lands to fund education, that is even better, because then Utah will become even more dependent on the Federal Government and the preferred social agenda of Washington, DC. Make no mistake about it. This is not unique to the State of Utah.

Those of us who are westerners question when is enough enough. There has been no change in the policy of some of these eastern seaboard States and many of the other original States from 1790 until now. What has changed is what they want western lands for. There would be a considerable difference if New Jersey as a State were 63 percent owned by the Federal Government, like Utah, but it is not. The State of New Jersey is only 3 percent owned by the Federal Government, so it has the luxury to assume that two-thirds of Utah is, one might interpret, for the private pleasure of the residents of New Jersey.

We can get into a long discussion over the various conservation measures mentioned by the Senator from New Jersey, but I think the Senate should remember that the primary purpose of the national forests—a lot of us seem to have forgotten this—the primary purpose of the national forests, when they were withdrawn from public domain, was simply to ensure a steady supply, a renewable supply, of timber. That is almost seen as a joke today, but that was the concept; the forests were to be conserved, used, and managed to provide a steady supply of timber.

The Wilderness Act, speaking of history, was originally intended to set